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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ROMERO,

Defendant and Appellant.

B271804

(Los Angeles County
Super. Ct. No. 6PH01869)

APPEAL from an order of the Superior Court of
Los Angeles County, Jacqueline H. Lewis, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Luis Romero appeals from a postjudgment order revoking and reinstating his parole on condition he serve 180 days in county jail. The order was based on the trial court's finding that Romero violated the conditions of his parole by failing to follow the instructions of the Division of Adult Parole Operations (DAPO) and having access to a simulated firearm. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Romero was convicted of carjacking (Pen. Code, § 215, subd. (a))¹ on March 24, 2011 and sentenced to five years in prison. He was released on parole on July 18, 2015. As conditions of parole, Romero was required to comply with the instructions of his parole agent, not engage in conduct prohibited by law, and not have access to "any type of firearm, instrument or device which a reasonable person would believe to be capable of being used as a firearm."

On March 10, 2016, the DAPO filed a petition for revocation of parole pursuant to sections 3000.08 and 1203.2. The petition alleged Romero violated the conditions and terms of his parole by (1) failing to comply with his parole officer's instructions; (2) trespassing in an apartment from which he had been evicted; and (3) having access to a simulated firearm. The accompanying parole violation report set forth the factual basis for the petition and included information on the conditions of parole, including a "Notice and Conditions of Parole" form signed by Romero.

¹ All further undesignated statutory references are to the Penal Code.

At a contested parole revocation hearing held on March 18, 2016, the following evidence was adduced. Romero's parole agent had instructed him to report to the parole office on March 1, 2016. At Romero's request, the appointment was rescheduled for March 3, 2016. However, on March 3, Romero and his sister's family were being evicted from a one-bedroom apartment they shared, located on Tiara Street. Consequently, Romero testified he was not able to make the appointment.

Los Angeles Police Department Officer Jean-Pierre Charles testified that on March 3, 2016, he was dispatched to the Tiara Street apartment in response to a report of a landlord-tenant dispute. Romero's sister and family had been ordered to vacate the apartment no later than 4:00 p.m., but when Charles arrived at approximately 6:00 p.m., they were still in the process of moving out. Most of the apartment had been cleared out and only heavier items remained. Romero's sister's girlfriend, Mayeli Chavez, testified that they were waiting for a truck to enable them to move the remaining items from the apartment.

Officer Charles observed what appeared to be an assault rifle inside a closet in the apartment. It was approximately 30 inches long and heavy enough that Charles "recognize[d] it as a possibly real gun." Upon further inspection, Charles determined that it was a pellet gun. The orange tip had been covered with electrical tape. Romero was in a bathroom approximately four feet away from the closet where the gun was found. Chavez testified that she had purchased the gun at a yard sale two or three weeks earlier because she intended to go shooting with her nephew. Until the day of the move, she had kept the gun in her bedroom and had never shown or mentioned it to Romero. Romero, who slept in the living room, testified he

was unaware of the gun until Charles showed it to him. Romero called his parole agent on March 7, from jail, and admitted he had been “around” the firearm.

The trial court found, by a preponderance of the evidence, that Romero had failed to follow the DAPO’s instructions and had access to a simulated firearm. It did not credit Romero’s testimony that he was unaware of the firearm, and concluded it was more likely than not that Romero was well aware of the firearm’s presence. It found the evidence insufficient to sustain the allegation that Romero had trespassed. The court revoked Romero’s parole and restored it on the same terms and conditions as previously imposed, with a modified condition that he serve 150 days in county jail. It awarded 16 days of actual custody credit and 16 days of conduct credit, for a total of 32 days. Romero timely appeals the trial court’s order. (Cal. Rules of Court, rule 8.308(a); *People v. Wagner* (2016) 2 Cal.App.5th 774, 780.)

DISCUSSION

After review of the record, appellant’s court-appointed counsel filed an opening brief which raised no issues, and requested this court to conduct an independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436. On August 15, 2016, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

We have examined the entire record and are satisfied appellant’s attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

DISPOSITION

The order is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.